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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

H/S PARTNERS II, LLP,
Plaintiff and Respondent,

v.

RAYMOND G. CHOY ET AL.,
Defendants and Appellants

JOHN E. WAI,
Intervenor and Respondent.

A142529

(City & County of San Francisco
Super. Ct. No. CGC-12-522290)

Following a bench trial, defendants and appellants Raymond G. Choy and Lorraine J. Choy, individually and as trustees of the Raymond G. Choy and Lorraine J. Choy Revocable Trust dated August 6, 2007, (appellants or Choys) appeal from a judgment awarding intervenor and respondent John E. Wai¹ specific performance of a contract for the purchase of real property. We affirm.

I. BACKGROUND

The Choys are the owners of a 12-unit residential building located at 1360-1370 Pine Street in San Francisco, California (the Property). On February 7, 2012, the Choys entered into a contract with H/S Partners II, LLP (H/S Partners) for the purchase of the

¹ John E. Wai is 88 years old. He filed a motion for calendar preference for argument and decision, which we granted.

Property. This contract was later cancelled at the request of H/S Partners through mutually executed cancellation instructions on March 23, 2012.

Later that same day, i.e.—March 23, 2012—the Choys entered into a contract with John Wai for the purchase of the Property for \$1.85 million (the Wai Contract). Pursuant to the Wai Contract, escrow was to close within eight months or sooner to accommodate a 26 United States Code section 1031 tax deferred exchange (1031 exchange) by the Choys. Additionally, the Property was to be “accepted in its present ‘as is’ condition.” The Wai Contract required a \$100,000 deposit and provided that Wai could do property inspections within nine days.

Also on March 23, 2012, escrow opened at Old Republic Title Company (the title company) and Wai deposited \$10,000. Wai testified that he opted to deposit only \$10,000 and not the entire \$100,000 because it did not make sense to tie up the entire amount for such a long period of time without any interest. Wai believed that Raymond Choy understood his position and had no objection to it. Wai had known Choy since the late 1970’s and he considered Choy to be a good friend. Both Wai and Choy were experienced real estate investors and each owned substantial real property in San Francisco. When Wai asked Choy if he could deposit just \$10,000, Choy responded, “It’s up to you, but, you know, according to the contract you’re supposed to deposit a hundred thousand.” Choy never, at any time, made a demand for Wai to deposit the remaining \$90,000. Rather, Choy explained that he was “concentrating on other things.” He further testified that although he did not object to the \$10,000 deposit, he did not approve of it either.

Wai conducted physical inspections of the Property within a few days of entering the contract with Choy. After the inspections, Wai told Choy that he was satisfied with physical condition and that, in any event, the physical condition was not an issue for him because he planned to do a massive remodel of the Property. Wai believed there were no inspection contingencies. Indeed, Choy never asked Wai to remove any contingencies, as Choy, himself, did not believe it to be an “issue.”

Choy testified he was concentrating on finding a suitable property for his 1031 exchange. After locating a suitable exchange,² Choy told Wai that he was ready to close on the purchase sale agreement for the Property. Choy testified that he was trying to get Wai to “speed it up” but Wai said that he would not close until two more rent-controlled tenants could be bought out. Choy and Wai started to negotiate with the tenants, but Wai thought the tenants wanted too much money. Finally, Choy was able to get two units to sell their tenancy for \$50,000 each. Wai still thought that was too much money. After a few days, Choy told Wai that he was willing to pay half if he agreed to close the deal. Choy testified that Wai did not respond to this offer and that despite Choy’s repeated efforts to reach Wai, Choy was unable to contact Wai about this issue. Wai denied ever telling Choy that he would not close escrow unless two of the tenancies were bought out.

At some point during this time period, Rob Cassil of H/S Partners began calling Choy to check on the status of the Wai Contract. Choy told Cassil that he was worried because he was still having “little problems” with Wai and he could not seem to appease Wai enough to close the deal. Cassil told Choy to come over to his office to discuss a better, “backup” offer with H/S Partners. Following this meeting, on May 15, 2012, the title company prepared mutual Cancellation Instructions at Choy’s request. Two days later, Cassil prepared a Cancellation of Purchase Agreement and forwarded it to Choy. The Cancellation of Purchase Agreement was based on Wai’s purported failure to remove the inspection contingency. On May 20, 2012, Choy signed the Cancellation of Purchase Agreement. There is, however, no evidence that the Cancellation of Purchase Agreement was ever delivered to Wai.

On May 21, 2012, H/S Partners and Choy entered into a second contract for the purchase of the Property (the H/S Partners Contract) for \$1.9 million, i.e. \$50,000 more than the Wai Contract; an additional escrow was opened that day as well. The H/S Partners Contract has an addendum, which states: “Acceptance of this offer is subject to the cancellation of the contract and escrow with [] Wai as Buyer.”

² Choy could not remember the exact date.

On June 12, 2012, Choy signed the Cancellation Instructions prepared by the title company, which called for the mutual cancellation of the escrow in the Wai Contract, but Wai never signed the instructions. Thereafter, on July 11, 2012, H/S Partners filed a complaint suing Choy for specific performance of the sale of the Property. H/S Partners recorded a lis pendens that same day.

On July 25, 2013, after being granted leave of court, Wai filed a complaint in intervention. In his complaint, Wai sought declaratory relief, as well as an order expunging the lis pendens on the Property. As to the cause of action for declaratory relief, Wai sought the following declarations from the court: 1) the Wai Contract is a valid and binding contract for purchase of the Property; 2) the lis pendens was without legal cause and subject to expungement; 3) the Choys were not in breach of the H/S Partners Contract because it is “merely a backup offer entertained and received by . . . [the] Choy[s] to become operative in the event” that the intervenor cancels the Wai Contract and that “pre-condition of cancellation by intervenor has not occurred”; and 4) the Choys are not obligated to sell the Property to H/S Partners, are not obligated in damages to H/S Partners, and H/S Partners is not entitled to specific performance of the H/S Partners Contract.

In their August 3, 2012 answer, the Choys averred that the H/S Partners Contract was a conditional agreement, subject to the following condition precedent: “ ‘Acceptance of this offer is subject to the cancellation of the contract and escrow with [John] Wai as Buyer.’ ” The Choys further denied the enforceability of the H/S Partners Contract “due to the fact that John Wai, [the] initial buyer[,] has not cancelled the existing contract with [the Choys], which is a condition precedent to the May 21, 2012 agreement with [H/S Partners].”

At some point in August 2012, Wai and Choy met with escrow officer Annie Nobilione at the title company. Nobilione testified that Wai and Choy came into her office and wanted to close escrow, but due to the lis pendens the title company would not close the deal. Nobilione further testified that she knew Wai said that he wanted to close escrow, and she believed Choy said he did too, but she could not remember Choy’s part

in the conversation. In any event, at no time did Choy tell Nobilione that he did not want to close escrow or that he had cancelled the escrow.

On September 20, 2012, Wai deposited the additional \$90,000 to escrow. Then, on August 28, 2013, Wai's counsel sent a letter to the title company, along with a courtesy copy to Choy, in which Wai explicitly released all contingencies.

On March 21, 2014, the Choys filed a notice of motion to file a cross-complaint against H/S Partners and Wai. The notice of motion was not accompanied by a memorandum of points and authorities or by the proposed pleading. Citing California Rules of Court, rule 3.1112(a),³ the trial court denied the motion without prejudice and the matter proceeded to a bench trial, which was set to commence on May 5, 2014.

Just prior to the start of trial, on April 28, 2014, Wai requested the title company to prepare the buyer's escrow instructions for him to sign in order to close on the Property. However, by reason of the existing lis pendens, no action was taken by the title company.

After reading the trial briefs and receiving testimony of witnesses, the trial court ruled in favor of Wai, granting specific performance and finding as follows: 1) the Wai Contract is a valid and binding contract to purchase the Property; 2) the lis pendens should be released or expunged;⁴ 3) the Choys are not in breach of the H/S Partners Contract as that contract is "merely a backup offer," and 4) the Choys are not obligated to sell the Property to H/S Partners and are not liable for damages to H/S Partners. The parties stipulated that each party would bear their own costs of suit, including attorney's fees.

³ California Rules of Court, rule 3.1112(a), provides: "Unless otherwise provided by the rules in this division, the papers filed in support of a motion *must* consist of at least the following: [¶] (1) A notice of hearing on the motion; [¶] (2) The motion itself; and [¶] (3) A *memorandum in support* of the motion or demurrer." (Italics added.)

⁴ According to Wai, H/S Partners removed the lis pendens almost immediately after trial. The record however does not include the release or expungement. Wai avers that he is capable of paying the full purchase price and closing escrow and would like to do so.

II. DISCUSSION

On appeal, appellants claim that the Wai Contract had “lapsed” for non-performance by Wai. They further contend that the trial court erred in denying leave to file a cross-complaint. As we shall explain, appellants have not met their burden on appeal.

Although an appellant’s duty on appeal is well established, in this case we feel compelled to set forth the basics. Appellants’ brief is nothing more than a rehashing of the facts, cast in a light most favorable to them. The brief is devoid of legal analysis, citation to relevant supporting legal authority, or cogent explanation as to how they were prejudiced by the claimed errors. A trial court’s ruling is presumed to be correct and the burden of demonstrating error rests squarely on the appellant. (See *Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 631-632.) When an appellant raises an issue “but fails to support it with reasoned argument and citations to authority, we treat the point as waived. [Citations.]” (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785; see *Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979 [appellate court not required to consider points not supported by citation to authorities or record].) In other words, “[m]ere suggestions of error without supporting argument or authority other than general abstract principles do not properly present grounds for appellate review.” (*Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2002) 100 Cal.App.4th 1066, 1078.) Accordingly, an appellant may not simply make the assertion the ruling is erroneous and leave it to the appellate court to figure out why.

Here, appellants’ conclusory assertion that the Wai Contract lapsed does not constitute “adequate factual or legal analysis.” (*Placer County Local Agency Formation Com. v. Nevada County Local Agency Formation Com.* (2006) 135 Cal.App.4th 793, 814.) Accordingly, we summarily reject appellants’ contentions for failure to provide adequate briefing. (*Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1116.) On this same basis, we reject appellants’ contention regarding the denial of their motion to file a cross-complaint. Although appellants argue that the cross-complaint was

compulsory, there is no way to verify this assertion. Neither a memorandum of points and authorities nor the proposed pleading was ever submitted to the trial court. Moreover, the trial court denied the motion without prejudice, thus leaving appellants the opportunity to remedy these deficiencies. Appellants, however, never opted to file the necessary paperwork in the trial court. On appeal, appellants assert that they had “meritorious claims” against Wai “for forfeiture of his \$100,000 deposit, for liquidated damages and for capital gains taxes” they have to pay because “they could not participate in a 1031 exchange of the subject property.” Appellants do not cite to supporting legal authority and point to nothing in the record showing that these issues were raised below. We are “ ‘not required to make an independent, unassisted study of the record in search of error,’ ” develop an appellants’ argument for them or otherwise act as counsel for them. (*Guthrey v. State of California, supra*, 63 Cal.App.4th at pp. 1115-1116.)

III. DISPOSITION

The judgment is affirmed. Respondent Wai is entitled to his costs on appeal.

REARDON, J.

We concur:

RUVOLO, P. J.

STREEETER, J.

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